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June 27, 2008

Mr. Corbin Davis
Clerk, Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

Re: File 2006-16, Proposed Court Rule Changes to MCR 6.302 and MCR 6.310

Dear Mr. Davis:

On behalf of the State Appellate Defender Office and as Managing Attorney of the Plea Unit of SADO, I write to oppose the proposed amendment to MCR 6.302 and MCR 6.310. I join with the vast majority of commentators who have written to the Court on this issue to oppose the proposed amendments that would preclude judicial involvement in plea bargains.

From what I have seen in handling more than a thousand plea appeals at SADO over the last twenty years, and particularly since the Court's decision in *People v Cobbs*, 443 Mich 276 (1993), it would appear that judges are careful to limit their involvement in the plea bargaining process so as not to coerce the plea. I have challenged a judge's participation in the plea bargaining process only twice, and both cases arose from the Wayne County Circuit Court where there is extraordinary pressure to resolve cases short of trial. Otherwise, I have rarely encountered judicial overreaching during the plea bargaining process. I say this with the added knowledge of having participated in numerous in-chambers conferences with trial judges and prosecutors where the plea bargain was revised or renegotiated on appeal.

I also agree with Judge Gotham's comments that a defendant would understandably wish to know whether the trial judge is inclined to grant HYTA status before accepting a proposed plea bargain. It would seem only logical that a defendant would not submit to the process of self-conviction without knowing whether the conviction would be a permanent part of his or her record.

I also agree with the comments made by the prosecutor and circuit judge in Sanilac County, that a defendant is more likely to accept the plea bargain if there is some judicial involvement in the bargain. Judge Teeple made the same point to me recently at the bench, and he asked me to convey this sentiment to the Court, that he advises defendants during the plea hearing of the opportunity for plea withdrawal if the bargain cannot be followed because he wants the defendant to feel an added level of assurance with the bargain (something more than the prosecutor's promise). His point was

one of assurance from the court, not compliance with the court rule. See MCR 6.302(C). This is a subtle point, but one worth mentioning.

Finally, I would note that trial judges typically are involved in the settlement of civil cases. MCR 2.401 (pre-trial settlement conferences). If a more restrictive rule were called for in criminal cases, presumably the party to be protected by such a rule would be the criminal defendant. And yet in my experience, defendants fare much better with judicial involvement in plea bargaining than without. This is notably true in Oakland County where the prosecutor's office seldom offers plea bargains and the trial judges are often forced to rely on *Cobbs* evaluations as incentive for the plea.

I would urge the Court *not* to amend the court rules so as to prohibit judicial involvement in plea bargaining.

Sincerely,

Anne Yantus
Managing Attorney
Special Unit, Pleas/Early Releases

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cc: Hon. Donald Teeple
James Young, Sanilac Prosecutor
File